



## CALIFORNIA WATER BOARDS

### State Water Resources Control Board

### Regional Water Quality Control Boards

**Water Board Function:** Enforcement of water quality and water rights laws and regulations

**Water Board Program(s) Relevant to Function:**

All of the Water Boards' regulatory programs have an enforcement component. The State Water Board's Office of Chief Counsel and Office of Enforcement support the enforcement component of the regulatory programs by bringing or coordinating formal enforcement actions as needed to achieve compliance with water quality and water rights laws.

**Problem/Issue Description:**

The Water Boards' regulatory programs establish legal requirements that must be met by individuals and facilities to ensure the protection of water quality and water rights. Compliance with those requirements is needed to fully implement the laws, regulations, policies, and plans designed to protect the State's waters. In some cases, violations occur and it is necessary to ensure regulated community compliance with requirements through enforcement actions taken by the Water Boards. Therefore, enforcement is a tool to compel compliance when other strategies, such as voluntary actions to meet requirements or compliance assistance, are ineffective. The Water Boards' enforcement strategy relies on a deterrence-based approach to encourage widespread voluntary compliance with water quality and water rights laws.

**Overview of Function:**

A critical piece of the Water Boards' regulatory programs is enforcement. Enforcement, in and of itself, is not a regulatory program. It is a business function that supports the regulatory programs and authorities of the Water Boards. The principal goal of enforcement is to encourage compliance. Effective enforcement brings violators into compliance, deters future violations, prevents pollution from occurring, promotes prompt cleanup and corrects existing pollution problems, and protects downstream water users and the environment.

The Water Boards' core regulatory efforts are intended to promote compliance through a set of integrated actions that include:

- Ensuring permits are enforceable
- Assuring compliance
  - Conducting inspections
  - Reviewing discharger self monitoring reports
  - Investigating complaints
- Addressing non-compliance with enforcement

The enforcement component of the core regulatory programs concentrates on:

- Documenting and tracking violations
- Initiating formal and informal enforcement actions
- Coordinating with law enforcement agencies
- Monitoring and reporting on the effectiveness of State and Regional Water Boards' actions

Enforcement strategies available to the Regional Water Boards range from the most informal to the very formal. An informal enforcement action can be as simple as a phone call or email, while the most formal actions involve referral of a matter to the Attorney General for litigation. In between are Notices of Violation, Investigatory Orders, Cleanup and Abatement Orders, Cease and Desist Orders, and orders imposing Administrative Civil Liability. For the more formal actions, a hearing before the Regional Water Board will generally be necessary. Ideally, serious violations will result in fair and appropriate consequences for the violators including consistent application of penalties and other wide-ranging sanctions available to the Water Boards by law. Moreover, penalties must be calculated to eliminate the economic advantage achieved through noncompliance with water quality laws. Consistent use of formal enforcement actions to address the most serious violations is a fundamental goal of the Water Boards. Enforcement not only protects the public health and the environment, but also creates an "even playing field," ensuring that dischargers and water users who comply with the law are not placed at a competitive disadvantage by those who do not.

Compliance activities are activities taken to ensure compliance with regulatory requirements and include routine compliance inspections, review of required water quality monitoring reports, and recording violations in the California Integrated Water Quality System (CIWQS) database. Enforcement activities are taken in response to violations or related to specific compliance problems.

**Role of Water Board Staff:**

State Board or Regional Board staff investigates enforcement-related issues and recommends actions to State or Regional Board. Staff generally determines the appropriate type of action to pursue in response to the specific violations. Staff is also responsible for inputting enforcement and compliance data into the Water Boards' data base system, CIWQS. The data system provides information to the public and Water Board management on a wide range of enforcement-related topics, including information mandated by law to be publicly reported such as violations detected and enforcement actions taken in response.

**Role of Regional Board Members:**

Full authority to address any water quality enforcement issue within their region. Conduct public hearings, and consider and adopt proposed enforcement actions, including cleanup and abatement, cease and desist, administrative civil liability, and judicial referrals. Regional Board members can set enforcement goals or initiatives for staff as a policy matter.

**Role of State Board Members:**

Limited authority to address water quality enforcement issues. Review petitions from Regional Board enforcement actions. Conduct public hearings, and consider and adopt proposed enforcement actions, including cleanup and abatement, administrative civil liability, and judicial referrals.

**Primary Issues of Concern:**

Several aspects of the enforcement effort require ongoing attention. The first is consistency in enforcement decisions and actions across the State. This issue relates to the degree of flexibility that Regional Boards should exercise in responding to local needs, conditions, and sensibilities balanced against the expectation of the public and the regulated community that uniform procedures and approaches will be used by all the Water Boards so that they are fair and predictable. The second issue is the ability of the Water Boards' enforcement staff to efficiently pursue enforcement actions with existing resources. The third issue is the effectiveness of the enforcement action in meeting our compliance goals. Final issue is the adequacy of data that would allow objective evaluation as to whether our enforcement program is addressing the aforementioned issues. While the Water Boards have numerous statutory obligations to report on certain enforcement outputs, the Water Boards also intend to identify and use performance outcomes as a measure of effectiveness and will develop measures for efficiency and consistency.<sup>1</sup>

An overarching issue for enforcement as well as all other Water Board functions is the availability of resources. The table below shows the combined total of staff performing enforcement work, as opposed to compliance work, in the Regional Water Boards related to the Water Boards' five core regulatory programs for fiscal year 2006-2007. The table does not include attorney staff resources from either the Office of Chief Counsel or the Office of Enforcement.

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<sup>1</sup> The Water Boards have statutory obligations to track and report on certain enforcement data including violations of waste discharge requirements, formal and informal compliance and enforcement actions for violations, and analyze the effectiveness of the current enforcement policies (see Water Code section 13385(o)). The Regional Water Boards also are required to report compliance rates (Water Code section 13225(e)) and, in consultation with the State Water Board, identify and post, on the Internet, at least quarterly, a summary of all enforcement actions taken and the disposition of those actions (Water Code section 13225(k)).

Region	NPDES	STORM WATER	WDR	LAND DISPOSAL	401 Cert	TOTAL
	PY	PY	PY	PY	PY	PY
Region 1	1.8	0.7	0.7	0.0	0.1	3.3
Region 2	3.8	3.8	11.1	0.9	0.3	19.9
Region 3	1.5	1.0	3.5	0.1	0.1	6.2
Region 4	3.5	1.4	0.3	0.1	0.1	5.4
Region 5	4.1	3.6	3.5	10.9	0.1	22.2
Region 6	0.7	1.5	3.5	0.4		6.0
Region 7	1.0	0.2	1.7	0.1	0.0	3.0
Region 8	5.4	2.3	0.0	0.3	0.1	8.2
Region 9	0.6	2.3	0.6	0.6	0.1	4.3
<b>Total</b>	22.4	16.8	24.9	13.4	0.9	78.5

PY= Person Year

The total number of regional enforcement staff is 82 PY. The total number of regional compliance staff is 95.7 PY. The total number of regional compliance and enforcement staff is 174.2 PY.

Specific questions that address enforcement issues include:

- Are the regional enforcement activities addressing the more serious water quality threats in the respective regions?
- Looking at the resources devoted to each of its core regulatory programs, do the Water Boards have the right percentage of resources devoted to enforcement actions?
- Are the Water Boards successfully using all of the tools in their enforcement toolbox to compel compliance?
- Are the Water Boards successfully influencing the compliance rates of the regulated entities with their core regulatory programs, including but not limited to, enforcement?
- Are the Water Boards getting the maximum deterrent impact from its formal enforcement activities --- are the penalties and costs imposed on violators sufficiently high to encourage compliance and make the cost of violating water quality laws greater than the cost of compliance?

- Are the supplemental environmental projects accepted by the Regional Boards (comprising in value almost 66% of the total monetary assessments) as part of many enforcement resolutions strategically evaluated and designed to address the most important environmental issues with that region?

**Definition of Key Terms:**

None.